



MAR 14 2017

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March 10, 2017

Jerome Stout
Watkins Manufacturing Corporation
1280 Park Center Dr
Vista California 92081

VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED

C T Corporation System
818 W. 7th Street Ste 930
Los Angeles CA 90017

Re: Clean Water Act Notice of Intent to Sue/60-Day Notice Letter
Watkins Manufacturing Corporation Violations of General Industrial Permit

Dear Mr. Stout:

Please accept this letter on behalf of the Coastal Environmental Rights Foundation (CERF) regarding Watkins Manufacturing Corporation ("Watkins")'s violations of the State Water Resources Control Board Water Quality Order Nos. 97-03-DWQ and 2014-0057-DWQ, Natural Pollutant Discharge Elimination System (NPDES), General Permit No. CAS000001, and Waste Discharge Requirements for Discharges of Storm Water Associated With Industrial Activities Excluding Construction Activities (Industrial Permit).¹ This letter constitutes CERF's notice of intent to sue for violations of the Clean Water Act and Industrial Permit for Watkins' facility located at 1280 Park Center Drive, Vista, California, 92081 ("Facility"), as set forth in more detail below.

Section 505(b) of the Clean Water Act requires that sixty (60) days prior to the initiation of a citizen's civil lawsuit in Federal District Court under Section 505(a) of the Act, a citizen must give notice of the violations and the intent to sue to the violator, the Administrator of the U.S. Environmental Protection Agency, the Regional Administrator of the U.S. Environmental Protection Agency for the region in which the violations have occurred, the U.S. Attorney General, and the Chief Administrative Officer for the State in which the violations have occurred (33 U.S.C. § 1365(b)(1)(A)). This letter provides notice of Watkins' Clean Water Act violations and CERF's intent to sue.

I. Coastal Environmental Rights Foundation (CERF)

CERF is a non-profit public benefit corporation organized under the laws of the State of California with its main office in Encinitas, CA. CERF is dedicated to the preservation, protection, and defense of the environment, the wildlife, and the natural resources of the

¹ The Industrial Permit amendments, pursuant to Order No. 2014-0057-DWQ, become effective July 1, 2015. All references are to the Industrial Permit prior to modification pursuant to Order No. 2014-0057-DWQ are to the "Industrial Permit." All references to the Permit as modified by Order No. 2014-0057-DWQ are to the "New Industrial Permit."

California Coast. Members of CERF use and enjoy the waters into which pollutants from Watkins' ongoing illegal activities are discharged, namely Agua Hedionda Creek, Agua Hedionda Lagoon, and ultimately the Pacific Ocean.

The public and members of CERF use Agua Hedionda Creek, Agua Hedionda Lagoon and the Pacific Ocean to fish, sail, boat, kayak, surf, swim, scuba dive, birdwatch, view wildlife, and to engage in scientific studies. The discharge of pollutants by the Watkins Facility affects and impairs each of these uses. Thus, the interests of CERF's members have been, are being, and will continue to be adversely affected by Watkins Owners and/or Operators' failure to comply with the Clean Water Act and the Industrial Permit.

II. Storm Water Pollution and the Industrial Permit

A. Duty to Comply

Under the Clean Water Act, the discharge of any pollutant to a water of the United States is unlawful except in compliance with certain provisions of the Clean Water Act. (See 33 U.S.C. § 1311 (a)). In California, any person who discharges storm water associated with industrial activity must comply with the terms of the Industrial Permit in order to lawfully discharge. Watkins enrolled as a discharger subject to the New Industrial Permit on January 30, 2015 with WDID No. 9 371005398. Watkins originally enrolled under the Industrial Permit on September 1, 2005.

Pursuant to the Industrial Permit, a facility operator must comply with all conditions of the Industrial Permit. Failure to comply with the Industrial Permit is a Clean Water Act violation. (Industrial Permit, § C.1; New Industrial Permit §XXI.A. ["Permit noncompliance constitutes a violation of the Clean Water Act and the Water Code..."]). Any non-compliance further exposes an owner/operator to an (a) enforcement action; (b) Industrial Permit termination, revocation and re-issuance, or modification; or (c) denial of a Industrial Permit renewal application. (*Id.*). As an enrollee, Watkins has a duty to comply with the Industrial Permit and is subject to all of the provisions therein.

B. Inadequate Storm Water Pollution Prevention Plan

One of the main requirements of the Industrial Permit (and New Industrial Permit) is the Storm Water Pollution Prevention Plan (SWPPP). (Industrial Permit §A; New Industrial Permit, Finding I.54, §X). Watkins has not developed an adequate SWPPP as required by the New Industrial Permit.

The SWPPP's site plan fails to include all elements as required by New Industrial Permit Section X.E. The SWPPP fails to identify nearby water bodies, municipal storm drain inlets, locations where materials are directly exposed to precipitation, and areas of industrial activity, including outdoor storage areas, shipping and receiving areas, waste treatment and disposal areas, material reuse areas, and vehicle and equipment storage/maintenance areas. (New Industrial Permit, §X.E.3.).

The Watkins SWPPP dated June 2015 also fails to adequately assess the Facility's potential contribution of 303(d) listed pollutants to receiving waters. Per section X.G.2.a.ix of the New Industrial Permit, the Watkins Owners and/or Operators are required to assess the

potential industrial pollutant sources to receiving waters with 303(d) listed impairments identified in Appendix 3. (New Industrial Permit, §X.G.2.a.ix). The SWPPP identifies only elevated coliform bacteria as a 303d listing for the receiving water, and Nitrogen and Phosphorus as TMDL constituents.² (SWPPP, p. 4). However, Agua Hedionda Creek is listed as impaired for enterococcus, fecal coliform, manganese, selenium, total dissolved solids, and toxicity as well.

The SWPPP fails not only to assess the potential presence of all 303(d)-listed constituents, but also additional pollutants. (SWPPP, p. 9). This is completely inadequate, especially because the EPA Fact Sheet for Sector Y specifically identifies numerous additional pollutants associated with Sector Y, including solvents and zinc.³ The SWPPP further acknowledges the use and presence of metals, resins, fiberglass and treated wood stock at the Facility, as well as outdoor storage of scrap metal, electronics and old motors. (SWPPP, pp. 6-7). However, the SWPPP fails to include these constituents as part of the Facility's monitoring protocol, in violation of the New Industrial Permit. (New Industrial Permit, §XI.B.6.c.; see SWPPP, p. 35, Section 9.4.3).

Lastly, the City of Vista February 2016 stormwater compliance inspection report identified non-compliant BMPs requiring correction, including the following note: "stored metal material and tub molds are a significant source of metals, and pose a threat of metal pollution discharge. All stored metal material (metal shelving, stored tubs) and tub molds must be removed from outside or covered appropriately." (Inspection Number 14290). Thus, the Watkins Facility is not only a potential source of additional pollutants, it likely contributes to the impairment of receiving waters by failing to adequately implement BMPs to reduce the presence of such pollutants in its discharge. Watkins' failure to include metals, including zinc, copper, selenium, and manganese, and phosphorus, total dissolved solids and nitrogen in its SWPPP as potential pollutants for evaluation and water monitoring constitutes a violation of the New Industrial Permit and Clean Water Act. (New Industrial Permit, §X.G. 2; §XI.B.6.c.).

Every day the Watkins Owners and/or Operators operate the Facility without an adequate SWPPP constitutes a separate and distinct violation of the Industrial Permit, the New Industrial Permit, and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). The Watkins Owners and/or Operators have been in daily and continuous violation of the Industrial Permit since at least March 10, 2012. These violations are ongoing and the Watkins Owners and/or Operators will continue to be in violation every day they fail to address the SWPPP inadequacies. Thus, the Watkins Owners and/or Operators are liable for civil penalties of up to \$37,500 per day for violations prior to November 2, 2015, and \$51,570 per day of violations occurring after November 2, 2015. (33 U.S.C. §1319(d); 40 CFR 19.4; New Industrial Permit, §XXI.Q.1).

C. Failure to Monitor

The Watkins Owners and/or Operators have failed to sample as required during the 2015-2016, 2014-2015, and 2013-2014 wet seasons, though numerous qualifying events

² The SWPPP fails to identify the water body to which the Facility purportedly discharges to and the receiving water for which such TMDL is established. Agua Hedionda Creek does not have an established TMDL for these constituents. (See http://www.waterboards.ca.gov/rwqcb9/water_issues/programs/tmdls/lagoons_aguahediondacreek.shtml and http://www.waterboards.ca.gov/rwqcb9/water_issues/programs/tmdls/tmdladopted.shtml)

³ https://www.epa.gov/sites/production/files/2015-10/documents/sector_y_rubberplastic.pdf

occurred.

Sections B(5) and (7) of the Industrial Permit required dischargers to visually observe and collect samples of storm water discharged from all locations where storm water is discharged. Facility operators, including the Watkins Owners and/or Operators, were required to collect samples from at least two qualifying storm events each wet season, including one set of samples during the first storm event of the wet season. Required samples were to be collected by Facility operators from all discharge points and during the first hour of the storm water discharge from the Facility. Watkins failed to monitor as required during the 2013-2014 and 2014-2015 wet seasons. Watkins also failed to sample at discharge point 1 for virtually all monitoring events.

The New Industrial Permit requires dischargers to take two samples between July 1 and December 31 and two samples between January 1 and June 30. (New Industrial Permit, §XI.B.2). Nonetheless, Watkins has failed to comply with these requirements. (See 2015-2016 Annual Report, Question 3). Watkins has also failed to sample the requisite number of qualified storm events for the first half of the 2016-2017 year.

Lastly, Watkins' failure to sample for magnesium, nitrate, nitrite and total nitrogen, phosphorous, selenium, magnesium, copper, zinc, and total dissolve solids – constituents that are likely present at the Facility and for which receiving waters are listed – constitutes an additional violation of the New Industrial Permit. (New Industrial Permit, §XI.B.6.c.).

Every day the Watkins Owners and/or Operators failed to adequately monitor the Facility is a separate and distinct violation of the Industrial Permit, New Industrial Permit, and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). These violations are ongoing and the Watkins Owners and/or Operators will continue to be in violation every day they fail to adequately monitor the Facility. The Watkins Owners and/or Operators are thus subject to penalties in accordance with the Industrial Permit – punishable by a minimum of \$37,500 per day of violations prior to November 2, 2015, and \$51,570 per day of violations occurring after November 2, 2015. (33 U.S.C. §1319(d); 40 CFR 19.4; New Industrial Permit, §XXI.Q.1).

D. Unauthorized Non-Storm Water Discharges

Except as authorized by Section IV of the New Industrial Permit, permittees are prohibited from discharging materials other than storm water (non-storm water discharges) either directly or indirectly to waters of the United States. (New Industrial Permit, §III.B.; IV.A-B).

Information available to CERF indicates that unauthorized non-storm water discharges occur at the Facility due to inadequate BMP development and/or implementation necessary to prevent these discharges. For example, unauthorized non-storm water discharges occur from the Facility's compressed air dryer condensate, air conditioners, and sprinkler system testing. The Watkins Owners and/or Operators conduct these activities without BMPs to prevent related non-storm water discharges. Non-storm water discharges from condensate and sprinkler testing without adequate BMPs – including prevention of contact with industrial areas and monthly visual observations – do not constitute authorized non-storm water discharges pursuant to Section IV.A. of the New Industrial Permit.

Further, the San Diego Regional Municipal Separate Storm Sewer System (MS4) Permit Section E.2.a. prohibits the discharge of unauthorized non-storm water as an illicit discharge. Specifically, air conditioning condensation should be directed to landscaped or other pervious surfaces or the sanitary sewer – not the storm drains. (MS4 Permit, Section E.2.a.(4)(a)). Notably, air dryer condensate is not an authorized non-storm water discharge pursuant to the MS4 Permit.

Watkins' unauthorized non-storm water discharge violations are ongoing and will continue until the Watkins Owners and/or Operators develop and implement BMPs that prevent prohibited non-storm water discharges or obtain separate NPDES permit coverage. Each time the Watkins Owners and/or Operators discharge prohibited non-storm water in violation of Discharge Prohibition III.B. of the Permit is a separate and distinct violation of the Storm Water Permit and section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). CERF will update the number and dates of violations when additional information becomes available. The Watkins Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since March 10, 2012.

III. Remedies

Upon expiration of the 60-day period, CERF will file a citizen suit under Section 505(a) of the Clean Water Act for the above-referenced violations. During the 60-day notice period, however, CERF is willing to discuss effective remedies for the violation noted in this letter. If you wish to pursue such discussions in the absence of litigation, it is suggested that you initiate those discussions immediately. If good faith negotiations are not being made, at the close of the 60-day notice period, CERF will move forward expeditiously with litigation.

Watkins must develop and implement a SWPPP which complies with all elements required in the New Industrial Permit, including the requisite monitoring, and address the consistent, numerous, and ongoing violations at the Facility. Should the Watkins Owners and/or Operators fail to do so, CERF will file an action against Watkins for its prior, current, and anticipated violations of the Clean Water Act.

CERF's action will seek all remedies available under the Clean Water Act §1365(a)(d). CERF will seek the maximum penalty available under the law which is \$37,500 per day of violations prior to November 2, 2015, and \$51,570 per day of violations occurring after November 2, 2015. (33 U.S.C. §1319(d); 40 CFR 19.4; New Industrial Permit, §XXI.Q.1). CERF may further seek a court order to prevent Watkins from discharging pollutants. Lastly, section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), permits prevailing parties to recover costs, including attorneys' and experts' fees. CERF will seek to recover all of its costs and fees pursuant to section 505(d).

IV. Conclusion

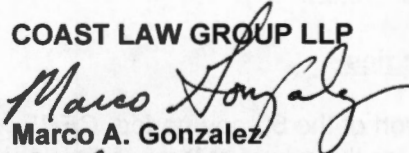
CERF has retained legal counsel to represent it in this matter. Please direct all communications to Coast Law Group:

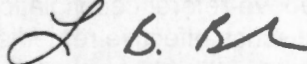
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CERF will entertain settlement discussions during the 60-day notice period. Should you wish to pursue settlement, please contact Coast Law Group LLP at your earliest convenience.

Sincerely,

COAST LAW GROUP LLP


Marco A. Gonzalez



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Attorneys for

Coastal Environmental Rights Foundation

CC:

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